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Docket No. A-677

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1984

BRUCE QUINN and
$196,330 U.S. CURRENCY,
Petitioner,

-VS-

THE UNITED STATES OF AMERICA,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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ISSUES PRESENTED

1. Do the decisions of the Courts below ignore the right of citizens to possess and carry money from one state to another, as guaranteed by the federal Constitution without unlawful governmental intrusion where there is no probable cause to reasonably believe that said money was acquired by or intended to be used for illegal means or purposes?

Petitioner answers, "yes."

2. Do the facts of this case invoke the principles of this Court's decision in The Rio Grande, 90 U.S. (23 Wall) 458, 23L.Ed158, which has never been overruled or modified?

Petitioner answers, "yes."

3. Did the District Court improperly grant the government's motion for summary judgment in this cause where the claimants filed counter affidavits disputing the existence of probable cause to seize the money in question and that said money was not narcotic related?

Petitioner answers, "yes."

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IN THE SUPREME COURT
OF THE UNITED STATES

Docket No.

A-677

BRUCE QUINN and
$196,330 U.S. CURRENCY,

Petitioner,

VS.

THE UNITED STATES OF AMERICA,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Petitioner prays that a Writ of Certiorari issue to review the Judgment of the United States Court of Appeals for the Ninth Circuit entered in this cause on September 24, 1984 and Order denying Rehearing En Banc dated December 6, 1984.

CITATIONS OF OPINIONS BELOW

The judgment of Forfeiture entered by the District Court September 26, 1983. The Order of the Court of Appeals Denying Stay of Execution of Judgment dated 2-7-84. The Order of the Court of Appeals denying rehearing of the Motion to Stay Execution of the District Court judgment dated March 6, 1984. The Order of the Court of Appeals dismissing the Appeal dated September 24, 1984. The Order of the Court of Appeals denying Rehearing En Banc dated December 6, 1984.

JURISDICTION

Jurisdiction of this Court is invoked under Title 28, Sec. 1254 (1) U.S.C.

RELEVANT FACTS

Federal Agents (DEA) in Detroit alerted DEA Agents in Los Angeles that two (2) men, Wayman Darren Humphries and Bruce Quinn were traveling to Los Angeles together carrying a large sum of cash money. This observation was made when these men went through the security screening process at the Detroit Metro Airport.

Detroit DEA requested that the Los Angeles DEA surveil these men once they reach their destination to determine where they would go or what they would do once they disembarked from the aircraft. Because of the large sum of cash and the passengers' destination, DEA Agents suspected that these men may have been drug couriers for a Detroit based drug ring.

Instead of following the instructions of the Detroit DEA Agents, Los Angeles DEA Agents intercepted the two (2) passengers and seized the money. Petitioner Quinn vehemently objected to the seizure and refused to leave the DEA office until the money was counted in his presence and a receipt given therefor.

This seizure was the subject matter of the government's petition for forfeiture in the District Court pursuant to Title 21, Sec. 881 U.S.C. and Rule 6(c) Admiralty and Maritime claims. Appended to a Motion for Summary Judgment was an Affidavit signed by Agent Walter Brown of the Detroit DEA Office seeking a Title 3 Wiretap order to intercept calls to and from certain telephones in the Detroit Metropolitan area. On page 17 of the Brown Affidavit, Brown stated the following:

> DEA -4 stated that on Sylvester Murray's trip to Los Angeles in July, 1982, Murray met a person by the name of "Bruce" who DEA - 4 described as a black male, 6'2", 220 lbs., medium brown complexion with hair styled in a jeri curl, moustache. *DEA -4 states that "Bruce" oeprates a beauty salon business in California.*

DEA-4 stated that "Bruce" helped to make arrangements for Murray's California heroin purchases."(Emphasis Added)

On pages 18-20 of the Brown Affidavit the incident which is the subject matter of this litigation The Eastern District of Michigan Grand Jury indicted the Sylvester Murray conspirators in a subsequent Indictment, but, did not include Petitioner Bruce Quinn and Wayman Darren Humphries.

Also, appended to the Motion for Summary Judgment were Declarations of the Los Angeles DEA officers; wherein, they describe their version of the search and seizure.

Humphries and Quinn filed counter affidavits disputing the legality of the search and seizure and that the money was narcotic related.

The District Court granted the government's Motion for forfeiture and denied Quinn's Motion for Summary Judgment. An appeal was timely taken to the Ninth Circuit Court of Appeals.

Petitioner filed a Motion for Stay of Execution of the District Court judgment in the Court of Appeals. The motion was denied February 7, 1984. Within 14 days, Petitioner filed a Motion for rehearing. While the motion for rehearing was still pending, the government enforced the District Court judgment, and immediately moved for dismissal of Petitioner's Appeal. Dismissal was granted 9-24-84. A Petition for rehearing en banc was denied December 6, 1984.

REASONS FOR GRANTING WRIT

1. THE DECISIONS OF THE COURTS BELOW IGNORE THE RIGHT OF CITIZENS TO POSSESS AND CARRY MONEY FROM ONE STATE TO ANOTHER, AS GUARANTEED BY THE FEDERAL CONSTITUTION WITHOUT UNLAWFUL GOVERNMENTAL INTRUSION, WHERE THERE IS NO PROBABLE CAUSE TO REASONABLY BELIEVE THAT SAID MONEY WAS ACQUIRED BY OR INTENDED TO BE USED FOR ILLEGAL MEANS OF PURPOSES.

The federal constitution, Amendment XIV guarantees to every citizen the right to liberty, the pursuit of happiness, and the right to own and possess property. These rights are so fundamental in our system of justice that they can only be taken by the government through due process of law *Cumings* v. *Missouri*, 4 Wall 277, 18L Ed. 356. The guarantee of due process of law is one of the most important to be found in the Constitution or any of the amendments. It has been said that without it the right of private property could not exist, in the sense in which it is known to our laws. *Ochoa* v *Hernandez-Maroles*, 230 U.S. 139; *Mooney* v *Holohan*, 294 U.S. 103; *Herbert* v. *Louisiana*, 272 U.S. 312.

Obviously, due process means, at a bare minimum, a reasonable opportunity to be heard on the merits. Where material probative facts are in dispute, an opportunity to present proofs in open Court, and an opportunity to cross examine opposing witnesses.

In this cause, the government filed a Petition for forfeiture under Title 21, Sec. 881 Petitioner herein filed an answer to said action disputing the legality of the search and seizure, and that the money seized was drug related.

The government filed a motion for Summary Judgment. In support thereof, the government appended an Affidavit of

a Detroit DEA Agent, stating through second and third degree heresay, that sometime in July, 1982, a person named "Bruce", 6'2" tall, 220 lbs., met with a suspected drug dealer known to them as Sylvester Murray. This affidavit was submitted to the District Court for the Eastern District of Michigan for authorization of wiretapping of certain telephones in the Detroit Metro area. The "Bruce" referred to in the Affidavit was never identified as the same person the money was seized from.

Moreover, the closest reference in the Affidavit to the "Bruce" referred to was the conclusionary allegation that, "DEA-4 stated that "Bruce" helped to make arrangements for Murray's California heroin purchases. Apparently, the Detroit Grand Jury did not feel that there was sufficient probable cause to issue an Indictment against "Bruce".

The other declarations appended to the motion for Summary Judgment were simply designed to show that the search and seizure in Los Angeles was by consent. Petitioner filed Affidavit disputing this fact, which sets up a question of fact that must be resolved by a trier of fact through an evidentiary hearing or trial.

In this cause, all the government could show was that the Petitioner possessed and carried $196,330.00 from Detroit, Michigan to Los Angeles via airplane. The government seized the money without a scintilla of proof that it was in any way illegally acquired, or intended for an illegal purpose. Such would be the only legal basis for governmental confiscation of a citizen's property.

Instead of the lower courts guaranteeing Petitioner's right to not have his property taken from him but by due process of law, the lower courts have allowed Respondent to orchestrate the Petitioner out of Court. With the knowledge that the Ninth Circuit had upheld the dismissal of a similar appeal where the government had enforced a District Court

judgment where no stay of execution was sought, Respondent hurriedly enforced the instant judgment while Petitioner's attorney was attempting to secure a stay. Thus, by scheme and artifice, the court has allowed the government to shut the courthouse doors in the face of aggrieved citizens without them having their day in Court, and in deference to clear disputed questions of fact. Literally, the government has "strongarmed" the Petitioner, took his money away from him and converted it to is own use with the blessing of the Court.

Because of the broad sweep of the instant decision, we strongly urge this Court to grant certiorari. We contend that a proper decision of this case is necessary as a deterrent to arbitrary and oppressive police conduct. The decision of the court in this case sets an extremely dangerous precedent that is sure to cause irreparable harm to many citizens in the future as well as appellant presently.

2. THE FACTS OF THIS CASE INVOKE THE PRINCIPLE OF THIS COURT'S DECISION IN THE RIO GRANDE, 90 U.S. (23 Wall) 458, 23 L.Ed 158, WHICH HAS NEVER BEEN OVERRULED OR MODIFIED.

The government relied on the Ninth Circuit Court of Appeals' decision in *United States* v. *$57,480.05*, 722F.2d 1457 (9th Cir. 1984) as authority for dismissal of the appeal below, and it's progency *American Bank of Wage Claims* v. *Registry of the District of Guam*, 431F. 2d 1215(9th Cir. 1970). The Court of Appeals dismissed the appeal in the instant case on these authorities. We contend that both the Court and Counsel's analysis of these cases are clearly misplaced and misunderstood. Both of those cases hinged on the fact that *nothing* had been done to prevent enforcement of the District Court judgment. Such was not the case here.

In the instant case, as well as *The Rio Grande*, 90 U.S. (23 Wall) 458, 23L. Ed 158(1874) cited in the Ninth Circuit's decision, steps were taken to prevent enforcement of the District Court judgment. In this case, government counsel had actual knowledge that a Motion for Stay was pending in the Court of Appeals the moment he instructed the Marshal to enforce the District Court judgment. This unilateral gesture manifests unprofessional and fraudulent conduct bordering on contempt.

If the Court upholds this conduct, then an aggrieved person has no right to appeal a decision of the District Court unless the government chooses to allow it. The statutory and Court rule rights of Appeal would be of no substance and wholly relegated to the mercy of the side that wins in District Court.

Here, the winning side in the District Court proceeded to enforce the judgment as a penal measure, because he could not orchestrate where the motion for Stay of Execution be filed. Rule 40(a) allows such motions to be first filed in the Court of Appeals wherein the circumstances are appropriate. We verily believed that the circumstances are appropriate for the motion to be entertained by the Court of Appeals. Although the Court ultimately ruled against us, our motion was properly in Court at the time the judgment was enforced.

The distinguishing features of the instant case from those of the cases relied on by Respondent:

1. We attempted to obtain a stay of execution of the judgment and the Court's decision was not final when the judgment was in fact executed.

2. We contend that the government's execution of the judgment in view of the pendency of a Motion for Rehearing before the Court was improper and fraudulent.

Thus, invoking the exceptions that do not disturb the Court's jurisdiction. See $57,480.00 at P. 1458.

The landmark decision on this principle is *The Rio Grande,* supra. The facts of that case were very similar to those of this case. There, the subject matter was a vessel. The District Court rendered a judgment of dismissal of the action, which was appealed the next day by an oral motion that was granted. An order was issued fixing the amount of the Appeal bond. The Marshal released the vessel several days before the Appeal bond was perfected. The boat was taken out to sea. Subsequently, the Circuit Court reversed the decision of the District Court.

The losing party contended that the Courts lost jurisdiction of the subject matter upon execution of the District Court judgment. The Court disagreed, saying: (at 462)

> "It may be well here to say that the judiciary and subsequent acts enact; in regard to appeals in admiralty from the District Court to the Circuit Court, that upon sufficient security and service of notice being given, within a certain time, to prosecute them with effect, the appeal shall be a supersedas and stay of execution. The security and notice,it seemed plain, had been duly given in this case."

At P. 463:

> "The Appeal stayed all proceedings and the parties were bound to keep the vessel where it then was, to wit, in the possession of the Court. The Appeal was taken and allowed before any order of discharge was granted, and the bonds required to make the appeal a stay of proceedings were given within the time required by the statute. The removal of the vessel pending an appeal to the Circuit Court was illegal, in violation of the express directions of the statute regulating appeals. We do not understand the law to be that an actual and continuous possession of the res is required to sustain the jurisdic-

tion of the Court. When the vessel was seized by the Order of the Court and brought within its control the jurisdiction was complete. A subsequent improper removal cannot defeat such jurisdiction."

At P. 465:

"We hold the rule to be that a valid seizure and actual control of the res by the Marshal gives jurisdiction of the subject matter, and that an accidental or fraudulent or improper removal of it from his custody, or a delivery to the party upon security, does not destroy jurisdiction. In the present case the Order for restoration was in direct violation of the statute regarding appeals, and did not operate to destroy the jurisdiction of the Circuit Court. That Court was authorized to proceed as if no such order had been made."

This case is the ultimate authority on this issue. A different result can only be reached where the facts do not invoke the principle. Such was the case in the Ninth Circuit cases relied on by the government. In both cases, *nothing was done*, nor was there even a claim of accident, fraud or mistake made. Thus, the Court reached proper results based on distinguishable facts.

We urge the Court to grant certiorari as the decision of the Ninth Circuit Court of Appeals, as applied to the facts of this case, would be tantamount to overruling this Court's decision in *The Rio Grande*, supra.

3. THE DISTRICT COURT IMPROPERLY GRANTED THE GOVERNMENT'S MOTION FOR SUMMARY JUDGMENT IN THIS CAUSE WHERE THE CLAIMANTS FILED COUNTER AFFIDAVITS DISPUTING THE EXISTENCE OF PROBABLE CAUSE TO SEIZE THE MONEY IN QUESTION AND THAT SAID MONEY WAS NOT NARCOTIC RELATED.

In order to prevail on Motion for Summary Judgment or otherwise on a Title 21, Sec. 881 seizure the government must show that (1) the search and seizure was lawful, *Brown* v *Texas*, 443 U.S. , 61L. Ed.2d , 99S Ct. 2637, 47 U.S.L.W.4810(1984) and, (2) that there is probable cause to believe the property seized was drug related. In this case, they showed neither; however, the district judge arbitrarily granted its Motion for Summary Judgment without articulating her reasons for so doing. The court had no right to resolve disputed questions of fact via Motion for Summary Judgment without an evidentiary hearing.

The threshold question in this case was the propriety of the search and seizure. The government filed declarations designed to show that the search and seizure was consentual. Petitioner filed counter affidavits disputing that the search and seizure was consentual or legal at all. This frames questions of fact that could only be resolved via a hearing.

It is well settled that evidence illegally seized in violation of the Fourth Amendment of the federal constitution must be excluded in forfeiture hearings. One *1958 Plymouth Sedan* v. *Pennsylvania*, 380 U.S. 693, 696, 702; 14L. Ed2d 170, 172, 176(1965). Thus, the District Court acted improperrly in resolving the dispute of the legality of the search and seizure by summary judgment.

Secondly, since at least one (1) of the men carrying the money disputed the government's claim that said money was drug related, this too framed a question of fact not amenable to summary disposition.

RELIEF SOUGHT

Petitioner prays that this Honorable Court will review the issues herein presented and grant this Petition for Certiorari.

Respectfully Submitted,
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Dated: March 15, 1985

APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

vs.

BRUCE QUINN,
Defendant-Appellant,

$196,330 U.C. Currency,
Defendant.

No. 83-6311

DC# CV-83-0395 MRP
Central California

ORDER

(Filed: February 7, 1984)

Before: PREGERSON and NELSON, *Circuit Judges*

Appellant's motion for stay pending appeal is denied. An application for stay should be made in the first instance in the district court. *See* Fed. R. App. P. 8(a). Appellant has not shown that such an application is not practicable in this case. Furthermore, appellant's motion to this court has failed to make any showing at all, much less has he established the requisite balance of hardships and likelihood of success on the merits, to warrant a stay.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

vs.

BRUCE QUINN,
Defendant-Appellant,

$196,330 U.S. Currency,
Defendant.

No. 83-6311

DC# CV-83-0395 MRP
Central California

ORDER

(Filed: March 6, 1984)

Before: PREGERSON and NELSON, *Circuit Judges*

Appellant's petition for rehearing of the court's order of February 7, 1984 denying his motion for stay of execution of judgment pending appeal is denied.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

vs.

BRUCE QUINN,
Defendant-Appellant,

$196,330 U.S. Currency,
Defendant.

No. 83-6311

DC# CV-83-0395 MRP
Central California

ORDER

(Filed: September 24, 1984)

Before: KENNEDY, PREGERSON and NELSON, *Circuit Judges*

Appellee's motion to dismiss the appeal for lack of in rem jurisdiction is granted. *See United States v. $57,480.05 U.S. Currency and Other Coins*, 80-5902 (9th Cir. January 3, 1984). Appellant has not shown that appellee's conduct was either fraudulent or improper.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

vs.

BRUCE QUINN,
Defendant-Appellant,

$196,330 U.S. Currency
Defendant.

No. 83-6311

DC# CV-83-0395 MRP
Central California

ORDER

(Filed: December 6, 1984)

Before: KENNEDY, PREGERSON and NELSON, *Circuit Judges.*

The motions panel as constituted in the above case has voted unanimously to deny Defendant-Appellant's petition for rehearing and to reject the suggestion for a rehearing en banc.

The full court has been advised of the suggestion for rehearing en banc, and no judge of the court has requested a vote on the suggestion for rehearing en banc. Fed. R. App. P.35

The petition for rehearing is DENIED and the suggestion for rehearing en banc is REJECTED.